

CRIMINAL APPEAL NO. 20 OF 2003

1. Mr. Vineet Kumar,
S/o V. Mohan
R/o Barista B-2,
Pinto Arcade, D.B.
Marg, Campal, Panaji,
Goa.

2. Mr. Precioso Louzado
s/o Mr. Richard Louzado,
Flat No. F-3 (H.B.C.),
Solanki Vatika, P.D.F.,
Bardez, Goa.

... Appellant

versus

State
through Public Prosecutor.

... Respondent

Mr. S. G. Bhobe, Advocate for the Appellant.

Mrs. Winnie Coutinho, Additional Public Prosecutor for
the State absent.

CORAM : P. V. HARDAS, J.

DATE : 5TH APRIL, 2004.

ORAL JUDGMENT

This is an Appeal under Section 449 of the

Code of Criminal Procedure assailing the Order dated 6th March, 2003, passed by the Additional Sessions Judge, North Goa, Mapusa, in Sessions Case No.15 of 2002 forfeiting the bail bond executed by the sureties and calling upon the sureties to deposit the forfeited amount of the bond.

2. The facts in brief as are necessary for the decision of this Appeal can be set out hereunder:-

One Saji Papu Kumar has been released on bail by this Court. While releasing the said Saji Papu Kumar, this Court had imposed various conditions, one of which was that the said Accused should not leave the State of Goa without the prior permission of the learned Trial Court. The present Appellants are the sureties who had executed the surety bonds in respect of the said Saji Papu Kumar.

3. The said Saji Papu Kumar who is hereinafter referred to as the Accused, remained absent on 26th February, 2003, 3rd March, 2003 and 5th March, 2003, when the sessions trial was fixed for evidence. Because of his absence, the learned Trial Court issued a non-bailable warrant against the Accused. Thereafter, the Accused surrendered himself before the learned Trial Court on 26th March, 2003. He was

immediately taken into custody. His plea for release on bail was turned down. Meanwhile notice was issued to the sureties and the sureties filed their reply. In the reply, the sureties/Appellants had stated that upon receipt of the notice from the learned Trial Court, they had contacted the relatives of the Accused who informed them that the Accused had been arrested in Kerala and was in police custody in Crime No.44 of 2003. In view of this, the sureties could not produce the Accused. The sureties claimed for their discharge.

4. The said Accused had filed proceedings in this Court namely Criminal Appeal No. 27 of 2003 challenging the Order passed by the Special Judge forfeiting the amount of the personal bond. The said Appeal came to be dismissed. The record of the said Criminal Appeal No. 27 of 2003 is available for my perusal. The Investigating Officer had filed a reply therein dated 10th April, 2003, in which he had admitted that his enquiries revealed that the Accused had been arrested in a counterfeit case by the Kerala Police. In the reply, it is further stated that the Accused was arrested in Crime No.44 of 2003 under Section 489(B) (C) r/w Section 34 of the Indian Penal Code. He was arrested on 31st January, 2003 and was remanded to judicial custody and thereafter was

admitted in the general hospital at Calicut, Kerala. The Accused was released on bail on 7th March, 2003, by the learned Sessions Judge.

5. The fact whether the Accused was justified in leaving the State of Goa without prior permission of the learned Trial Court and whether his explanation thereof was not satisfactory cannot be made a ground for forfeiting the surety bond of the Appellant. Admittedly, since the Accused was arrested and was in police custody and thereafter in judicial custody, the Appellants as sureties could not produce the Accused in the Court. The inability to produce the Accused was for reason beyond control of the Appellants. Since, the Appellants/sureties were not aware about the Accused going to his native place to visit his parents, the Appellants could not be enjoined with the responsibility of having to inform the learned Trial Court about the impending visit of the Accused. Therefore, according to me, the learned Trial Court was in error in forfeiting the bond of the Appellants and calling upon the Appellants to deposit the forfeited amount.

6. I have heard Mr. S. G. Bhobe, learned Counsel appearing on behalf of the Appellants. None appears on behalf of the Respondent/State. The Appeal

is, therefore, allowed. The impugned Order dated 6th March, 2003, is hereby quashed and set aside and in the circumstances, there shall be no order as to costs.

P. V. HARDAS, J.

RD.